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#### COVER NOTE

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From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	4 December 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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No. Cion doc.:	C(2020) 8572 final
Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 4.12.2020 amending Annexes I and V to Regulation (EU) 2019/125 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment to take into account the withdrawal of the United Kingdom from the Union

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Delegations will find attached document C(2020) 8572 final.

Encl.: C(2020) 8572 final



Brussels, 4.12.2020  
C(2020) 8572 final

**COMMISSION DELEGATED REGULATION (EU) .../...**

**of 4.12.2020**

**amending Annexes I and V to Regulation (EU) 2019/125 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment to take into account the withdrawal of the United Kingdom from the Union**

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE DELEGATED ACT**

Regulation (EU) 2019/125 of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment ('the Regulation') empowers the Commission to adopt delegated acts to amend its annexes (Article 24).

Following the withdrawal of the United Kingdom from the European Union and the expiry<sup>1</sup> of the transition period foreseen in Article 126 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ("the Withdrawal Agreement"), the provisions of the Regulation shall apply to and in the United Kingdom in respect of Northern Ireland, in accordance with Article 5(4) of the Protocol on Ireland/Northern Ireland ("the Protocol") to the Withdrawal Agreement read in conjunction with point 47 of Annex 2 to that Protocol. To reflect these changes, it is therefore appropriate/necessary to amend Annex I (competent authorities of the Member States) and Annex V, part 2 (destinations to which the Union general export authorisation applies).

As regards the amendment to Annex I, the 'competent authority' of the United Kingdom will function as such and make decisions on an application for an authorisation or prohibit an exporter from using the 'Union general export authorisation' in respect of Northern Ireland from 1 January 2021.

As regards the amendment to Annex V Part 2, containing a list of third countries that have abolished capital punishment for all crimes and confirmed that abolition through an international commitment, the Regulation includes in its Annex IV products which could be used for execution by means of lethal injection. These products also fulfil an essential lifesaving function and therefore measures that might limit their trade need to be carefully assessed to prevent such trade in legitimate lifesaving medical supplies from being negatively affected. To minimise the regulatory burden placed on EU companies exporting the products listed in Annex IV, Article 20(1) of the Regulation provides for a 'Union general export authorisation'. It is used when those goods or chemicals are exported to countries listed in Annex V Part 2 that have abolished capital punishment for all crimes and confirmed that abolition through an international commitment. The United Kingdom meets these requirements<sup>2</sup> and should therefore be added to the list in Annex V Part 2.

Article 29(6) of Regulation (EU) 2019/125 provides that the European Parliament and the Council shall have a scrutiny period of two months once the Commission will have adopted this Delegated Regulation. Publication of the Delegated Regulation will take place when neither of them expresses an objection.

### **2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT**

Member States' experts in the Anti-Torture Coordination Group were consulted prior to the adoption of this Act.

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<sup>1</sup> Article 185, fifth subparagraph, of the Withdrawal Agreement.

<sup>2</sup> UK has ratified the Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty in all circumstances.

### **3. LEGAL ELEMENTS OF THE DELEGATED ACT**

This act amends the reference to the United Kingdom in Annex I to the Regulation. It also adds the United Kingdom to the list of destinations to which the ‘Union general export authorisation’ applies.

# COMMISSION DELEGATED REGULATION (EU) .../...

of 4.12.2020

## **amending Annexes I and V to Regulation (EU) 2019/125 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment to take into account the withdrawal of the United Kingdom from the Union**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2019/125 of the European Parliament and of the Council of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment,<sup>3</sup> and in particular the first paragraph of Article 24 thereof,

Whereas:

- (1) The Withdrawal Agreement<sup>4</sup> sets out the arrangements for the withdrawal of the United Kingdom of Great Britain and Northern Ireland ('United Kingdom') from the Union and from the European Atomic Energy Community.
- (2) The transition period set out in Part Four of the Withdrawal Agreement ends on 31 December 2020 when the Union law ceases to apply to and in the United Kingdom.
- (3) Pursuant to Article 5(4) of the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement, read in conjunction with Annex 2 to that Protocol, the provisions of Regulation (EU) 2019/125 will apply to and in the United Kingdom in respect of Northern Ireland as from the end of the transition period.
- (4) Where Regulation (EU) 2019/125 establishes an authorisation requirement for trade from the Union to third countries, it would be the 'competent authority' of the United Kingdom which, from 1 January 2021 will be responsible for deciding on any applications for such an authorisation pursuant to that Regulation made by exporters established or residing in Northern Ireland.
- (5) Subject to the application of Regulation (EU) 2019/125 to and in the United Kingdom in respect of Northern Ireland, in accordance with Article 5(4), of the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement, read in conjunction with point 47 of Annex 2 to that Protocol, it is therefore appropriate to amend Annex I to Regulation (EU) 2019/125.
- (6) Pursuant to Articles 16 and 19 of Regulation (EU) 2019/125, an authorisation is required for exporting products listed in Annex IV to the Regulation which could be used for the execution of human beings by means of lethal injection.
- (7) Article 20(1) of Regulation (EU) 2019/125 provides for a 'Union general export authorisation'.

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<sup>3</sup> OJ L 30, 31.1.2019, p. 1.

<sup>4</sup> Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ L 29, 31.1.2020, p. 7).

- (8) In accordance with Annex V to Regulation (EU) 2019/125, the Union general export authorisation applies to exports of goods listed in any entry in Annex IV to Regulation (EU) 2019/125 and is valid throughout the Union for exports to the destinations listed in Part 2 of Annex V. Those destinations are third countries that have abolished capital punishment for all crimes and confirmed that abolition through an international commitment.<sup>5</sup>
- (9) The Union general export authorisation helps minimise the regulatory burden placed on Union companies exporting goods listed in Annex IV to the Regulation when exporting such medicinal products for legitimate therapeutic purposes.
- (10) The United Kingdom ratified Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty in all circumstances and therefore meets the requirements for inclusion in the list of destinations laid down in Annex V Part 2 to Regulation (EU) 2019/125.
- (11) Without prejudice to the application of Regulation (EU) 2019/125 to and in the United Kingdom in respect of Northern Ireland, in accordance with Article 5(4), read in conjunction with Annex 2, point 47, of the Protocol on Ireland/Northern Ireland annexed to the Withdrawal Agreement, it is therefore appropriate to amend Annex V to Regulation (EU) 2019/125.
- (12) It is appropriate to provide for the applicability of this Regulation after the end of the transition period, with effect from 1 January 2021. If the objection period provided for in Article 2 ends later than 1 January 2021, it is appropriate for reasons of legal certainty and to avoid any potential detrimental disruption to the operations of Union companies wanting to export goods listed in Annex IV to the United Kingdom to provide for a retroactive applicability of the Regulation from 1 January 2021.

HAS ADOPTED THIS REGULATION:

*Article 1*

Annexes I and V to Regulation (EU) 2019/125 are amended in accordance with the Annex to this Regulation.

*Article 2*

This Regulation shall enter into force on the fifth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall apply from 1 January 2021.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 4.12.2020

*For the Commission*  
*The President*  
*Ursula VON DER LEYEN*

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<sup>5</sup> Part 3 of Annex V to Regulation (EU) 2019/125.